

Shutesbury Conservation Commission
 Minutes – December 12, 2024
 Approved – January 2, 2025
Virtual Meeting

Commissioners Present: Janice Rowan, Beth Willson, Robert Douglas, Scott Kahan (8:58pm)

Commissioners Absent: None

Other Staff Present: Matteo Pangallo (Land Use Clerk)

Others Present: Dave Buchanan, Mare Fox, Adrienne Dunk, Tom Siefert, Suzanne Lyon, Liz Goodsell, Eric Bachrach, Jill Buchanan, Frank McGinn, Sharon Weizenbaum, Rinky ???, Mike Stotz, Scott Merzbach, Arlie Gould, Rita Farrell, Elizabeth Fernandez O'Brien, Mark Rivers, Joseph Salvador, Renee Moss, Joyce Braunhut, Diane ???, Robert Selesky, Jill Buchanan, Erin Jacque, Elizabeth ???, Don Wakoluk, Jennifer Wallace, Leslie Cerier, Su Hoyle, Renee Moss, Leslie Luchonok, Pam Ososky, Donna MacNicol, Scott Cashen, and others

Call to Order: 7:03pm

This meeting is being recorded.

Review and Vote on Past Minutes

Motion to approve the minutes of July 18, 2024 and November 14, 2024 as drafted: Douglas; second: Rowan . Approved unanimously.

Extension Request from Adrienne Dunk (GZA) for Lake Wyola Annual Drawdown Order of Conditions (DEP #286-0272)

Adrienne Dunk explains that Governor's LEADS Act automatically extends currently valid Orders of Conditions for two years so asks to rescind GZA's request for an extension so the Order will extend until January 2027 under LEADS Act.

Willson confirms this is what the new law would do and notes guidance coming from the state.

Dunk asks for letter from the Conservation Commission that an extension was requested just for the purposes of having it on record.

Douglas asks if this applies to Orders under the town's bylaw as well. Willson answers it does.

Motion to issue letter to GZA confirming that Order of Conditions is being extended under LEADS Act: Rowan; second: Douglas. Approved unanimously.

Chair Comments

Michael DeChiara will present to the Commission on the new clean energy law at next meeting.

Reviews protocol policy on public comment. Notes applicants will be invited to speak, then the Commission can ask questions and there will be a discussion. At that point, the Chair invites public comments and only at that point can the public ask to speak. Asks public not to interrupt Commission's discussion with applicants. Notes this policy was approved under the previous Chair. Notes that under policy, each member of the public has two minutes to comment.

Site Visits Update from Janice Rowan

November 17: visited the Goulds at 2 Wyola Drive regarding sedimentation in an inlet in Lake Wyola by their house. Because it is Town property, Rita Farrell from the Select Board went on a further visit and will present it to the Board.

November 19: visited library site, as usual every couple of weeks. Well line has been installed according to plan. Erosion barriers remain in good shape but a few places had flopping of curtain, so those places were pointed out. Discussed how to secure the soil with hydroseeding.

December 3: visited library site again. Again pointed out that erosion curtains showing some wear and will need to last until spring. Hydroseeding was to proceed December 4.

December 12: visited 31 Lakeview to issue Certificate of Completion. All looks good and has a sign marking where the wetlands are. Recommends voting on Certificate at next meeting.

Upcoming site visit to Kestrel's Bog on December 15 to review plans for revision to trails.

Upcoming site visit to library on December 17 to check on hydroseeding.

Conservation Restriction, Mark Wightman, Lot H-151 on Leverett Road

No restriction completed yet. Wightman working with Berkshire Design. Hoping to discuss at a future meeting.

Order of Conditions Review for Mikolajczuk, 32 Lake Drive (DEP #286-0278)

Applicant could not attend tonight. Agenda item moved to January 9.

Update from Jennifer Wallace, Lake Wyola Stormwater Erosion Task Force

Jennifer Wallace, Chair of the Lake Wyola Stormwater Erosion Task Force, reports on the Task Force's work since forming this summer. Using FRCOG's Lake Wyola watershed report. Notes the history of confusion about who was responsible for what work and how to do it. The FRCOG report had opportunities for public-private funding, so Task Force formed by the Town to improve sediment delivery and stormwater erosion around the lake. Have taken some site visits, with the Highway Department, to identify drainage points and flow-in points. Notes that focus in the past has largely been on road surfaces, but real issue is in drainage problems starting far above those roads. Town needs to manage how water flows downhill into the lake. Task Force has identified these systems and Select Board has charged them to find ideas to implement the

FRCOG report and other related reports that would make project recommendations. Doing research into what other towns have done as well. Reviews the three categories of action identified by FRCOG in its report—structural practices, maintenance practices and policies, and public education—and how those relate to the work of the Task Force. Questions the group is now addressing involve how to approach funding—all at once or in pieces—which they’ll be bringing to FRCOG at the Task Force’s next public meeting on Thursday. Lake Wyola Advisory Committee (LWAC) and the Task Force have generated a list of questions for FRCOG. Expects to have recommendations ready for the Select Board by the summer, but will be connecting with the Conservation Commission, as well as LWAC and the Lake Wyola Association about their roles. This is an ecosystem approach as opposed to property ownership approach, because the way water flows has nothing to do with who owns what property.

Willson notes the Conservation Commission would be willing to write letters of support to grants and other funding opportunities. Asks about whether the Task Force has identified places to start.

Wallace answers that there are places on each road that are delivering more water than they should be, and several discharge points have been identified, including some from the habitat study that was done a while ago. FRCOG report also confirmed seven locations, of which the Task Force is prioritizing a few. Task Force will look into upland sites that are moving sediment into the lake and match them to the discharge points. Issues of jurisdiction with Fiske Brooke and North Cove, but the four or five others can be prioritized. Will require management and maintenance commitments from the Association and from individual homeowners. Also notes how climate change has aggravated many of these sites.

Rowan likes the approach the Task Force is taking and getting local residents involved. The cove is going to be particularly difficult to deal with and asks about engagement with Wendell.

Wallace notes the Task Force is not yet at that stage. Fiske Pond is the seventh site in the FRCOG report and later on the Task Force’s list. Rowan notes it’s worth asking if there is land one of the towns or a landowner owns that could be used in the Task Force’s strategy. Wallace agrees and notes that both the ecosystem and the ownership structure around Fiske Brook is quite complex.

Rowan notes also the problem of bacterial rises in the lake and suggests that they can be related to increased sediment run-off, as seen in the Connecticut River as a result of stormwater runoff. Points out Westfield River Watershed study from 15 years ago that confirms the same effects.

Su Hoyle recognized by the Chair and asks what the two major drainage points are. Wallace notes that even though they have had site visits, they have not yet come to a final determination about the two main points of concern.

Jill Buchanan is recognized by the Chair and notes that because Douglas is no longer present there is a question about whether the meeting can proceed under Open Meeting Law. Suggests the meeting is irregular and should be adjourned. Willson notes that there is no deliberation occurring and the Commission is simply gathering information. Rowan agrees and notes that the

Commission is not currently being asked to vote or act on motions but that the meeting should not proceed to any of the agenda items involving a decision until Douglas returns.

Willson agrees to suspend meeting temporarily until Douglas returns.

Douglas returns.

Administrative Approval: Tree removal within buffer zone to an intermittent stream, Pam Ososky, 292 Pelham Hill Road

Pam Ososky explains two oak trees near driveway that are 75 feet from intermittent stream have encroached on sunlight for the property and garden. Have already removed other trees not in the buffer zone. Roots will be left and trees will be removed from the top down. Limbs will be chipped and logs cut for firewood. Willson notes a site visit confirmed proximity to the stream, plan is for administrative approval because this is a small project. Asks if Commission thinks erosion control needed given how little equipment is to be used. Rowan has no erosion concerns because work can be done from opposite side of the driveway and the quantity of trees on the lot means no concern about removing a few. Willson and Douglas concur. No public comment.

Motion to issue administrative approval for removal of trees at 292 Pelham Hill Road: Rowan; second: Douglas. Approved unanimously.

Discussion with Conservation Commission Applicants

Willson reports that Savahn Best has withdrawn. In attendance tonight are applicants Mare Fox, Tom Siefert, and Erin Jacque. Invites their comments.

Fox introduces self and explains connection to the Town and the lake. Served on School Committee and was representative to the union, did budget work. Used to be newspaper reporter covering board meetings. Strong interest in the environment. Rowan asks about availability and Fox notes schedule is flexible other than occasional trips. Rowan asks about legal background and Fox notes expertise is not in land use fields but is familiar with law and legal practices.

Siefert introduces self and explains interest in Conservation Commission from his own personal situation regarding an appeal on an RDA Order of Conditions. Learned about the process from that experience. Has interest in protecting environment from living on the lake, regularly attends Commission meetings and site visits, and tries to learn about the relevant laws and regulations.

Willson asks Siefert about schedule conflicts given service on other committees. Siefert notes service on the Stormwater Task Force, which might conflict, and Boating Safety, which meets on Wednesdays, and Associate Member on Planning Board, which meets on Mondays. Suggests those experiences give him great deal of understanding of town work, and is clerking for Wendell Board of Health, which would give additional town government experience. Douglas notes Seifert's ability to make an appeal to DEP, given how complex and tricky that can be.

Jacque introduces herself and explains her work in the wetlands field for the past twenty years, serving as conservation agent for four towns and on Conservation Commissions and as consultant, serves on multiple boards and committees at state and regional levels. Currently municipal conservation agent. Lives in Shutesbury, has two small children, dedicated to protecting open spaces and natural resources and having as little impact on environment as possible. Educated in stormwater and erosion control best management practices, academic training in wetlands assessment and delineation and plant identification.

Willson asks Jacque about potential conflicts of interest given that she works for Amherst and Jacque notes that she has spoken to both her supervisor and state Ethics Commission. She would have to recuse from projects on land that abut Town of Amherst land or if there were developers or projects coincident with Town of Amherst projects she would have to file an Appearance of Conflict of Interest Disclosure. Was informed by Ethics Commission that this is not an uncommon situation. Rowan asks if there are instances where both Willson and Jacque would have to recuse and Willson answers there could be. Douglas asks about her ideas regarding raising public awareness about regulations and rules. Jacque notes informational brochures, clear websites, answering questions brought from the public. Jacque asks about the scope and amount of Commission work during the year and Willson describes frequency of meetings and site visits.

Siefert asks whether recusals might be a concern if too many Commissioners abut sites of potential project applicants. Donna MacNicol, Town Counsel, notes any member could get a decision from an appraiser that a project would not increase or decrease the value of property and thus there would be no conflict, which would allow that member to participate without a conflict. General discussion ensues about whether any of the applicants to join the Commission would result in the Commission encountering potential conflict of interest because of the location of their home in town.

Willson asks MacNicol what would happen if three Commissioners did have a conflict. MacNicol answers that under state law, the application would likely be approved by default and then abutters would have to appeal it.

Willson reviews the process: the Commission will recommend two people to the Select Board and they will make the decision, hopefully at their next meeting.

Willson proposes recommending Erin Jacque and Mare Fox. Rowan agrees.

Douglas proposes recommending Tom Siefert and Erin Jacque.

Kahan agrees with Wilson.

Motion to recommend Erin Jacque and mare Fox to the Select Board for vote as new Commissioner: Rowan; second; Kahan. Approved unanimously.

Land Use Management Update from Scott Kahan

Parking lot for West Quabbin Conservation Area is advancing. Received the bids and proceeding with Town Counsel and Town Administrator to develop contract for the lowest bidder.

Bylaws Regulations

Willson notes they are starting with Docks and Piers section. MacNicol asks if she should provide comments on previous sections as well and Willson agrees if they're pressing and major since she'll be reviewing it after they're finished and can point out smaller things then. MacNicol cites problematic language such as "clear reason" and other terms that have no legal definition. She can provide more clarifications on her final review.

Dave Buchanan interrupts to be recognized by the Chair and is recognized. Asks why, if MacNicol recused herself on previous regulations, she is weighing in on these now. MacNicol notes she has no conflict of interest on general regulations that affect everybody. Previous recusal was because she was representing the Town on applications relevant to the library while the Library Building Committee was before the Commission.

Willson notes she would like to move expeditiously tonight and by the January 9th meeting incorporate all of the changes made thus far to produce a version for a public hearing.

Douglas returns to the regulations at hand and suggest it would be more streamlined to get MacNicol's comments after the Commission has gone through them. Willson agrees and invites MacNicol to provide feedback on these sections as they go through them. Rowan suggests following the published protocol on public comments and Willson agrees.

Reviewing section 10 of the regulations, which are new to the regulations. No major changes suggested other than correcting some typographic errors. Asks if Commission agrees with 10.4.2 that Small Project Permit would be sufficient for seasonal floats, buoys, and swimming platforms, unlike docks and piers which require a Notice of Intent. No objections.

MacNicol notes that first sentence of 10.4.6 is incomplete. Sentence corrected.

Rowan notes that under Chapter 91 license rules there are exceptions not reflected in these regulations for older docks and piers and she does not think the Commission should just be inventing new licenses for them that would contradict the state law. MacNicol notes the Commission can add language "unless subject to the exemptions in Chapter 91".

Douglas notes he has a pond float and asks if he needs to recuse himself. MacNicol notes this is a general regulation applicable to everyone, thus there is not a need to recuse.

Rowan raises concerns about 10.4.9, the regulation about storage of docks, which will be burdensome to many people who live around the lake who have small lots that are entirely within an AURA. Willson notes it is written in such a way that they could store them within the AURA.

Rowan also raises concern about requiring docks to be set 25 feet from property line, which aligns with Chapter 91 but does not align with the size of lots at the lake. Suggests being more

selective about what language from Chapter 91 should be included in the regulations and that it should be designed to fit the actual context of the lake and its parcels. Willson agrees and Rowan will review before the next meeting for further suggestions.

Kahan has no further comments on this section. MacNicol suggests that regulation should state that docks and piers will be installed pursuant to Chapter 91 and then list the exceptions rather than repeating section by section from Chapter 91.

Article IV, section 1 on inland wetlands banks. Willson notes most sections here are fine but notes that the use of “higher in elevation” in 1.2.2 should read “lower in elevation” in order to align with state regulations, and the phrase “or low water level” should be deleted.

Rowan asks about the idea of removing the preamble language from sections and moving the meaningful content up earlier. Willson notes that keeping presumptions at the end of sections would also align better with state regulations.

Rowan asks about the reasoning for the specific size of lot requirements stipulated in 1.4.4 and about the need for having piecemeal wildlife studies on a project-by-project basis. Willson notes that the measurements come from the state regulations. Rowan points out that a whole wildlife study was done for the lake, so asks what would be gained from doing one on a single project, especially if it covers something like four or five feet.

Kahan wants to return to 1.4.3.5 and asks how the criteria in this section could be measurable. For the purposes of regulations, this seems extremely ambiguous and difficult to define. Notes these are not part of the state regulations and isn't sure how they were devised. Would like to look into these further for when the Commission does its final review.

MacNicol notes that 2.1.2 language referencing specific paragraph numbers from WPA could raise problems if the WPA is ever changed or reordered, which require amending the regulations. Recommends removing the references to specific paragraphs and only cite the WPA in general.

Rowan notes same problem in 2.2.3, 2.2.4, and 2.2.5. Willson notes the references to articles here point to these regulations, not the WPA.

Kahan questions inclusion of “ice” in 2.3 and whether it is relevant.

MacNicol reminds Commission to double-check that all references to section numbers in final version are correct after revisions have been made.

Willson suggests 2.4.3 be moved into General Provisions section. MacNicol notes that references to “this Bylaw” should all be corrected.

In 2.4.5, the replacement should be stipulated as being one-to-one since some towns require different mitigation ratios. Kahan did not think of this as requiring a one-to-one ratio necessarily, just that there would be a subjective evaluation of the functions and values of the wetland in question. Would be a better practice mitigation strategy than just a size measurement. Douglas

notes some towns require two-to-one because of studies showing that created wetlands don't always thrive in the same way as naturally occurring ones. Willson notes Amherst requires two-to-one. Kahan proposes "at least a two-to-one ratio" instead. Douglas suggests adding language that would require method for ensuring replication success.

Willson proposes adding details for the purposes of clarification to 2.4.8.

Willson has no changes for section 3, on vernal pools.

Willson proposes holding a special meeting to finish reviewing the regulations. Will be held Thursday, January 2 at 6:00pm.

Unanticipated Business

None.

Adjournment

Motion to adjourn: Rowan; second: Douglas. Approved unanimously.

Adjourned: 10:30pm

List of Documents Used:

- Minutes of July 18, 2024
- Minutes of November 14, 2024
- Proposed revisions to Shutesbury Wetland Bylaw Regulations